

HIGHLEVEL PANEL ON THE ASSESSMENT OF KEY LEGISLATION AND THE ACCELERATION OF FUNDAMENTAL CHANGE

REPORT OF WORKING GROUP 2 ON LAND REFORM, REDISTRIBUTION, RESTITUTION AND SECURITY OF TENURE

LIMPOPO PUBLIC HEARINGS, 14-15 March 2017

1. INTRODUCTION

The Limpopo hearings were held over two days at the Bolivia Lodge in Polokwane. The following summarises land reform inputs made during these hearings, both from the prepared stakeholder inputs and spontaneous contributions from members of the public.

Over the two days, on the issue of land, the Panel heard from: M Nkwashu (Mopani Farmers Association), Sello Kekana (Kopano Formation Committee), BL Mabueala (Limpopo Provincial Community Property Association), ME Motibane/Mashapu Lesetja (NAFU-SA), B Masha (LAMOSA), Pitsi William Mokgehle (Moletji Land Forum), Vasco Mabunda (Nkunzi Development Association), Richard Spoor Inc, Shirham Shirinda (Legal Resources Centre), Mapela Executive Committee, Lephalale WWAO, Itsoseng Batsofe, ATOK Mining-affected Communities, Elton Thobejane (Mining and Environment Justice Communities Network of South Africa). TW Mathidi (AFASA/NERPO), TB Ravele (Mauluma Farming Enterprise), DE Letshele (Women in Agriculture and Rural Development), H Mugakula (Makuleke CPA), Nicky Chiloane (Moletete Land Claims Committee), Enie Motsepe (Masakaneng Claimants), COSATU, Moletji Land Rights Forum (Makgodi Community), Mapindani-Nghotsa Community, Nkanyani Communities, Bapedi Board Farms, Matepa Phetole (Kgashane Mamatlepa Community), Maihawa CPA, Bakgatla ba Motsha, Jack Ledwaba, Joseph Mahlasela (Mothapo TC), Elias Dafuma, Moutse Land Claiming Committees, Phillemon Talane (Sekhukhune Inter-project Association), Jack Mtheto Ledwaba, Margaret Molomo/Shimane Kekana (Mokopane Community).

From the floor, inputs were made by: Maehangwa CPA, Marishana Community, Ga-Mashashana Community, Masakhaneng Village, Noah Mohlala (Modimolle Community), Serala Heynsburg Claim, Mrs Mogale (Ga-Mothapo), Florence Sebola (Kgapanne),

2. ISSUES RAISED

- Small scale farmers are only allowed to apply for 2ha of land and permission to occupy land, as opposed to commercial farmers. Furthermore, water is a serious challenge, as

producers must rely on boreholes as a water source, yet legislation requires them to apply for water use licences. **(M. Nkwashu)**

- There is a challenge with mining company Ivanplats, whose operations led to community protests against removal of ancestral graves. Mining company was told to consult with the community, but the mine did not get the community's consent. Graves removed without consultation and community's consent. **(S Kekana)**
- IPILRA should reflect the interplay between the MPRDA and itself. Mineral law must incorporate the issue of land use. Before commercial or mining companies start operating they should get the proper permission. **(S. Kekana)**

- Current land reform laws are dismally feeble and no match for Apartheid laws. That is why the majority of black people are still in possession of the Bible instead of the Land. Land laws do not allow black people to become land owners, but perpetual tenants of the State. The CPA Act has proven to be a failure. **(BL Mabuela)**

- According to **ME Motibane**, farmers have been occupying farms for more than 20 years without lease agreements: process slow, promised to do audit, but farmers still operating without Government support. Caretaker agreements should have been issued, but this was not done. In instances where such agreements have been issued, this has not happened consistently.
- The Panel should speed up the process of allocating lease agreements. Recapitalise farmers to ensure that they can improve.
- There is a lot of unoccupied state land in province, which is only utilised by people in power. The Panel should visit office to assess available state land.
- Farmers in the Vembe district who have been approved for farms are still not occupying any farm to date. Farmers want to improve to move from emerging to commercial farmers.
- Majority of farmers lost stock due to drought, but received no assistance. Majority of crop farmers are not assisted, they need storage facilities.
- Stakeholders should be informed about the outcome of research conducted in the area of farming.
- The majority of land is used by white farmers and chiefs, not to farm on, but for residential purposes. This land needs to be given to the people to farm on.
- **B Masha** was concerned about CPAs. According to him, people were never issued with a guideline on CPAs. People were misled, as they agreed with the Traditional Authority that chooses CPA. But, given that people have signed, they are stuck with the CPA for next

10 years until the next election. No reports or accountability by the CPA. People are refusing to implement the law.

- Government collaborates with traditional authorities. Land allocated according to the Kgoshis, but no law that says the land belongs to traditional authorities.
- **PW Mokgehele** testified that the title deed for land allocated to Moletji still resides with the Minister, which should be returned to the people in the different villages of Moletji.
- Land claims have been settled and CPAs established, but title deed still resides with Minister. The land should be allocated to a CPA or royal household.
- In 1998 the community's land claim for farm Duitsland was successful. The land was promised to the community in 2003, but not given to the community. The case was taken to the land claims court, which ordered that a section 42(d) agreement be concluded by February 2014. If not, court order would be awarded. However, to date there has been no compliance with the court order.
- **Vasco Mabunda of Nkunzi** told the Panel that the Extension of Security of Tenure Act, Land Reform (Labour Tenants) Act and Land Restitution Acts are progressive, but lack political will to implement. Whilst ESTA is intended to protect the rights of farm workers and farm dwellers, it is only used as a tool to facilitate eviction of farm workers from white commercial farms.
- Section 4(2) of ESTA prescribes that if there is an imminent threat of eviction, farm workers and dwellers are to be prioritised, but no farm workers or dwellers have benefited from this provision.
- Section 23 of ESTA sanctions transgressors who evict without a court order, which is punishable by a fine and/or prison sentence. However, although more than 80 cases of illegal evictions have been reported in Limpopo, Gauteng and Mpumalanga, no transgressors have been arrested. Even CPAs amongst those helping to evict farm workers and dwellers.
- With regard to the conditions under which farm workers and dwellers live, the Nkosi survey conducted in 2005 indicated that over 1 million people have been evicted from commercial farms. No single farmer has been held to account for this and most people are forced to live in already overcrowded villages and townships. Reasons provided for such evictions range from the farm being used for a different purpose to selling of farms and termination of employment. This is despite the fact that ESTA prohibits evicting people when buying over land.
- The courts always assist those who evict, for example, the Land Claims Court is not useful, as it created a trend where households who lose a father (breadwinner) through death, termination of employment or divorce, are evicted with its sanction. It has also ruled that farm dwellers cannot claim restitution. Baltimore Farm dwellers complain of being abused, no cars allowed to come onto farm, no visitors are allowed, not allowed to take care of cows on the farm.

- In the view of **Richard Spoor Inc**, the Mineral and Petroleum Resources Development Act (MPRDA) exacerbates inequality. For example, once a mining right is granted, consent is not required from the land owner, who is not in a position of power to negotiate to be in a better position.
- The State Land Lease and Disposal Policy requires that a minimum of 10% of freeholding land should be given to communities, but this is done without any consultation with communities.
- Whilst the MPRDA requires consultation, this is not good enough. A consent requirement should expressly be included in the Act.
- Section 54 of the Act deals with compensation, but is convoluted and legally complex. As a result, the Department does not implement this provision. Compensation needs to be included in the Regulations to the Act.
- Land reform entities are designed to fail. Trustees that communities are unaware of. Communities have no say in decisions made by these entities and community vehicles. Need transparency in decisions and capacity building of communities.
- There is no substantive law that sets out the requirements for the relocation of communities. No social and labour plans are in place. Where they are available, communities are not involved in their development. This exacerbates inequality.
- **Shirham Shirinda** of the **Legal Resources Centre** told the meeting that tribal levies are unconstitutional, as the Constitution does not empower Traditional Leaders to levy taxes on tribal communities. In terms of the Traditional Leadership Governance Framework Act of 2003, if levies are to be charged by Traditional Authorities, the process must be managed by provincial government. The Limpopo Traditional Levies Act authorises taxing of levies if gazetted by the premier (R20 to R100 per year for right of residence). This amounts to double-taxation. Moreover, to date, the Premier has not gazetted any such levies. Thus, the Act is creating a 4th tier of government of people who have not been elected and when their levies have not been gazetted. People do not know what the levy money is used for and have not benefited from it. Section 4(3)(b) of the Act requires Traditional Authorities to meet with communities at least once a year to account for expenditure (financial report). However, in most traditional communities this does not take place.
- Despite the unconstitutionality of tribal levies and non-compliance with the Act, the payment of tribal levies is common throughout Limpopo. Payment enforced by denying access to basic social rights and services in the case of non-payment.
- The **Mapela Executive Committee** suggests that a Social Labour Plan should be developed to indicate how community is to benefit from mining.
- The MPRDA is problematic, as the community does not see any significant benefit from it.
- The community has gone on strike to protest, as they cannot see the mine benefiting them, whilst the company is mining from the community's own ground.

- Community does not know what the agreement is between Government and the mining company. Government should monitor implementation of the MPRDA.
- A Social labour plan is only meant for 5 years, which is combined with the IDP of the municipality. Mine allocates a development budget to the municipality, which incorporates it into the IDP.
- Mining activities have resulted in the depletion of agricultural land. This could threaten national production levels in the long term. Mining companies should revise compensation schemes to ensure communities are fairly compensated for loss of land and security. There is a domestic risk of food security, as available agricultural land continues to shrink. **(Lephalale WWAO)**
- **Itsoseng Batsofe** complained that the acquisition of land is laborious and very expensive (e.g., costs involved in re-zoning of land). There is a need to revisit how land is valued to try and limit exorbitant prices. Make pro forma applications should be provided for registration and re-zoning of properties.
- The view of the **ATOK Mining-affected Communities** was that IPILRA offers only interim protection. It is not clear how long this period is for. A single piece of legislation dealing with security of tenure and land reform is needed
- There is a lack of guidelines on how communities should organise themselves to form forums or CPAs.
- The development of Social and labour plans is legislated to ensure social cohesion, but there is no sanction for non-compliance against mining companies. Capacity and competence are needed in the public service to implement legislation passed by Government.

SUBMISSIONS FROM THE FLOOR

- The MPRDA should be repealed and not amended, as it supersedes the Constitution, violating basic human rights. Dwellers of human settlements need title deeds and not permissions to occupy (PTOs). Contact 0796319803.
- The **Maehangwa CPA**, claim was lodged in 1995, but no response to date. Claim submitted by women. When progress update was requested, claimants informed that Commission does not really care about who lodged the claim. HLP is request panel to check if women's issues are being addressed.
- People in the Warm Bath area are distanced from their own land by government to extract the minerals. In some instances, people who did not lodge claims for land get allocated land. People should be compensated for their land.
- Section 25(5) of the Constitution provides for land restitution, but Government has not realised this goal. Government is in the pockets of those owning the land. Claim lodged in

1998 by **Marishana** community, but no feedback to date. No title deed, cannot claim because the land was already bought.

- **Ga-Mashashana** community- tried to oppose levies by tribal authorities. People have no title deed, thus cannot make any banking loans, which perpetuates poverty and unemployment. Projects conducted are not monitored, there is no accountability.
- **Masakhaneng** village, forcibly removed in 1968. Applied for restitution of land evicted from by Apartheid government.
- Illegal mine operating in **Mokopane**. Government failing people because they have shares in the mines.
- **Modimolle** complaint, unable to access their livestock. Have to stand outside the gates of the farm, which is locked. HLP requested to assist them to get feedback on their requests for assistance.
- In the view of **Elton Thobejane** of the Mining and Environment Justice Communities Network of South Africa. There are no standard guidelines on percentage to be spent in social and labour plans proportionate to profit. Also, social and labour plans have limited benefits for communities, as they are not based on proper assessment of community needs and circumstances.
- There must be more transparency in mining sector. Mining companies do not comply with PAIA..
- AFASA/NERPO's **TW Mathidi** expressed his view that farmers who bought farms independently do not receive any support. The Proactive Land Acquisition Act destined farmers to failure. Most farms acquired through programme are not viable (e.g. no water), yet they were bought at a high price. The bridge from small holder to commercial farmer too wide without receiving any support, which results in failure. Hooking up with strategic partner, but not equal partnership and small farmers regress when strategic partner withdraws.
- **TB Ravele** said that the partnership model is not business friendly. In his area, the Mauluma Farming Enterprise, the model collapsed, leaving the community indebted to the amount of R5million to ABSA. Debt settled by March 2014, reflecting profit from there.
- Workers getting minimum wage and profit share. Laws are adequate, but the challenge is lack of official capacity.
- **Women in Agriculture and Rural Development** through their representative, **DE Letshele** reported that after getting back their land, they were grouped into a CPA, but the leaders were all male. They recommend that in future committees must be disbanded and replaced by committees led by women.
- Also, Government gave farms without equipment (tractors, irrigation system, etc.). Government should check whether farms are equipped. Electricity is very expensive, as they are still using the old system. Before people are given farms these issues should be

fixed and prepaid electricity metres installed. Eskom is failing the people. Farms are returning to the white people, as running costs are too expensive.

- Women who have bought farms are failing, as they are not getting any support from Government. Recommendation not translated.
- The story of **Makuleke CPA** was told by H. **Mugakula**. Land was restituted in 1998, 26ha inside Kruger National Park. They established a CPA and registered the land. However, people not empowered with capacity to run the project. The CPA Act should be revisited to provide for capacitation of land recipients.
- Some laws introduced after 1994 do not ensure security of tenure for those people whose land has been restituted to them.
- Cabinet Memo 5/2008 land claims in protected areas, people will not get land back, but monetary compensation. Memo needs to be revisited to see if that was a good decision.
- MOU signed in 2007 between Departments of Land Affairs and Environmental Affairs. Does not represent what people want to do on the land they are claiming. Need to be revisited.
- Co-management on area claimed on protected land where State takes lead in development. Rightful owners should have the right to decide what to do on the land they own.
- **Nicky Chiloane** spoke for the Moletete Land Claims Committee. Their land claim in Limpopo under Ramula municipality is still not settled after more than 10 years. They received the land in 2007, but without a development grant and resources.
- The CPA Act does not clearly spell out the role of Chiefs. People believe the land belongs to the chief, whereas the Act prescribes that the land belongs to the people. Chiefs thus allocate land unilaterally. (**Phillemon Talane** for the **Sekhukhune Inter-project Association**)
- **E Motsepe** speaking for the Masakhaneng Claimants said they received title deed in 2002, but cannot occupy the land to date. The majority of the people occupying the land are foreigners (90%). The remaining 10% include government officials, etc. No assistance is forthcoming from local or provincial government to enable the claimants to occupy their land
- **COSATU** tabled the following points:
 - Farmers need support to make them competitive.
 - Government has done little to help the most vulnerable, especially farmworkers. Need equity and land ownership to lift them from adverse conditions.
 - Fast track the land restitution backlog and release state land for land reform.
 - Provide farm workers with land and land equity.
 - Protect farm workers from illegal evictions.
 - Merge the DRDLR and DAFF to better facilitate land reform.

- **The Mapindani-Nghotsa Community** say that after 19 years, their land claim is not resolved. Willing-buyer-willing seller principle implemented as a law instead of as a principle as per section 25 of the Constitution.
- The Restitution of Land Rights Act is not implemented properly by government officials, who encourage people to accept money and not land even though they have opted to get land. Sections S21(d) and (e) of the Act are not followed. S11 is not followed, as people only have the capacity to watch the chief's kraal, not implement the provisions of the Act.
- **Nkanyani Communities** complain that the Restitution of Land Rights Act, 22 of 1994 appears to have been amended by the implementers. People are receiving money and not land rights. The fact that the Act speaks to restitution of land or monetary compensation presents a gap that gets manipulated.
- Government officials do not adhere to the provisions of the Act. They encourage communities to opt for monetary compensation instead of having their land restituted. Communities lost land, not money. Financial compensation cannot equate the value of the loss suffered during forced removals.

3. LEGISLATION REFERRED TO IN SUBMISSIONS

- **ESTA; CPA Act; MPRDA; Restitution of Land Rights Act; IPILRA; TLGFA; LTA;**

4. CONCLUSIONS AND RECOMMENDATIONS

- **Revisit the Act to allow people to resettle on ancestral land, even if the current occupants are black people, instead of declaring the land unrestorable.**
- **Section 25 of the Constitution does not resonate well with the willing-buyer-willing seller principle.**
- **Amend the CPA Act to spell out the role that the chief should play in the allocation of land that has been restituted.**
- **Regulate joint ventures/strategic partnerships to avoid double benefiting by the person who bought the land for cheap.**
- **Establish an ombudsman office to assist with post-settlement support to ensure politicians and officials are held accountable**
- **Review the implementation of the willing buyer-willing-seller principle to bring it in line with section 25 of Constitution.**

- Provide outreach programmes to improve farm dwellers' knowledge of the content of legislation even before the legislation is passed. Should facilitate their participation to ensure they input before legislation is enacted.
 - Legislation should be made available in local languages and in shorter versions.
 - Municipalities must implement existing legislation instead of supporting farmers on the pretext of food security. There must be a clear programme that is matched with a person speaking the local language.
 - Provide services to farm workers and dwellers, as they have no hospitals, access to clean water, education, etc.
 - Government service departments (such as Health, Home Affairs) should extend services to farms, at least once a month.
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- Support the land audit because some land is still in the hands of the wrong people.
 - Money should be readily available when farmers are allocated land for a full five years. Must be given option to buy or continue with the lease after five years.
 - Train small-scale farmers on farming and entrepreneurial skills.
 - Parliament should amend MPRDA to make it clearer how communities should benefit from mining operations.
 - Government should develop a policy requiring Members of Parliament to declare their interests. Should be minimum requirements for the election of ward councillors.
 - Amend the MPRDA to ensure that it is guided by the principle of free and informed prior consent by providing communities with the option to refuse mining activities.
 - The legislative requirement relating to water licenses should be reviewed to apply only to commercial farmers and allow small scale farmers to use water for free.
 - Pass the law that provides for land ceilings: Regulation of Agricultural Land Holdings Bill.
 - Revisit or repeal the CPA Act, as it does not offer security of tenure.
 - Give communities land, title deeds, training, post-settlement support and funding.
 - Review law on land ownership patterns.
 - Recognise and subsidise small commercial farmers.
 - Enhance infrastructure, such as proper roads to ferry goods to markets.
 - Need organic fertilisers that are not detrimental to health and the environment.
 - Amend section 25 of the Constitution.
 - Pass the Expropriation Act, without compensation in some cases.
 - Settle all outstanding land claims before mining can be commenced on land.
 - Remove the Minister's power to convene meetings from the Act.

5. DIRECT PLEAS FOR HLP INTERVENTION

- **ME Motibane of NAFU-SA requests HLP to visit the area to assess available state land**
- **Maehangwa CPA requests HLP to investigate whether women's interests are addressed in restitution matters**
- **Modimole Community requests HLP to pressure officials to respond to their pleas for assistance**
- **Makuleke CPA (H Mugakula) requests investigation into their Kruger National Park claim.**
- **Moletele Land Claims Committee (Nicky Chiloane) requests investigation into lack of progress in 2007 claim.**
- **Masakaneng Claimants (E Motsepe) request intervention with officials to explain delay in granting occupation to claim "finalised" in 2002.**
- **Bakgatla ba Motsha seek investigation into delayed claim, involving officials and mining.**
- **Joseph Mahlasela (Mothapo TC) request investigation of role of chiefs in local government, in the context of 28 farms owned by TC but no allocations**
- **Elias Dafuma's father was evicted from a white-owned farm. They have been locked out since. Requests HLP intervention**
- **Peni Nghotsa (and Mr Chauke) seek HLP intervention in unresolved claim despite maps and documentation dating back to 19th century.**
- **Florence Sebola (Bakgakga ba Maupa) requests intervention in claim where RLCC refuses to conduct verification.**